



“The sole purpose of a Rule 54(b) order is to provide an opportunity to appeal claims affecting some but not all of the parties or some but not all of the issues.” *Orion Financial Corp. of South Dakota v. American Foods Group, Inc.*, 201 F.3d 1047, 1049 (8th Cir. 2000). “In determining that there is ‘no just reason for delay,’ the district court must consider both the equities of the situation and ‘judicial administrative interests,’ particularly the interest in preventing piecemeal appeals.” *Shurgard Storage Centers v. Lipton-U City, LLC*, 394 F.3d 1041, 1046 (8th Cir. 2005) (quoting *Interstate Power Co. v. Kansas City Power & Light Co.*, 992 F.2d 804, 807 (8th Cir. 1993). “The finality requirement of 28 U.S.C. § 1291 [establishing appellate jurisdiction] embodies a strong congressional policy against piecemeal reviews, and against obstructing or impeding an ongoing judicial proceeding by interlocutory appeals.” *U.S. v. Nixon*, 418 U.S. 683, 690 (1974).

In the matter before this Court, Lustgraaf’s claims against the remaining defendant, Bryan S. Behrens, have been stayed by the Court pursuant to an order of the Court in the related case, Securities and Exchange Commission v. Bryan S. Behrens and National Investments, Inc., United States District Court for the District of Nebraska, Case No. 8:08cv13 (“SEC action”). (See Filing No. 80). In the SEC action, the Court entered judgment and appointed a Receiver on July 28, 2008.<sup>2</sup> In response to a multitude of proceedings and litigation brought against Behrens by individual investors following the judgment and the Receiver’s appointment, the Receiver filed a motion to stay those actions. On March 24, 2009, after hearing arguments, the Court granted the Receiver’s

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<sup>2</sup>Filing No. 85 in Securities and Exchange Commission v. Bryan S. Behrens and National Investments, Inc., United States District Court for the District of Nebraska, Case No. 8:08cv13.

motion to stay, further clarifying the Court's intention to prohibit individual investors from bringing actions against Behrens or National Investments that might affect the assets being gathered by the Receiver.

Lustgraaf represents to the Court that counsel for KC Life and Sunset have been consulted and do not oppose the instant motion.

The decision to grant or deny a motion for entry of a final judgment under Rule 54(b) is one that lies in the discretion of the district court, and will not be reversed absent an abuse of discretion. *Shurgard Storage Centers*, 394 F.3d at 1046. Weighing the equities of the situation, including judicial administrative interests, the uncertain duration of the stay resulting from the SEC action, the absence of any objection, and the fact that the entry of a final judgment in favor of Sunset and KC Life will not likely generate "piecemeal appeals," I conclude that there is no just reason for delay and the motion should be granted.

IT IS ORDERED:

1. Plaintiff Marlin Lustgraaf's Unopposed Motion for Entry of Judgment under Federal Rule of Civil Procedure 54(b), (Filing No. 98), is granted; and
2. A separate Judgment will be entered dismissing Sunset Financial Services, Inc., and Kansas City Life Insurance Company.

DATED this 1<sup>st</sup> day of September, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge